

# **Exhibit 4**

Nicolas Martin  
August 30, 2022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x  
HERMÈS INTERNATIONAL AND HERMÈS OF PARIS, INC.,

Plaintiff,

Index No.:  
22-CV-00384-JSR

-against-

MASON ROTHSCHILD,

Defendant.

- - - - -x

REALTIME DEPOSITION

OF

NICOLAS MARTIN

TAKEN ON: August 30th, 2022

- - - - -x

Nicolas Martin  
August 30, 2022

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I N D E X

WITNESS	EXAMINATION BY	PAGE
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1 N. MARTIN

2 THE WITNESS:

3 A. My understanding is  
4 MetaBirkins is a collection of NFT, so  
5 it's an induction of a smart contract,  
6 linked to a digital file, and the  
7 digital file today attached to the  
8 MetaBirkin is a -- is a picture of the  
9 Birkin Bag in colors, and with like  
10 a -- I don't know it is unusual -- like  
11 a fur aspect.

12 Q. Did you say like a fur  
13 aspect?

14 A. Like I would say like a --

15 TRANSLATOR: (Translating.)

16 It looks like it's in fur.

17 MR. MILLSAPS:

18 Q. And do any of the  
19 MetaBirkins images contain any other  
20 aspects aside from colors and fur?

21 MR. WARSHAVSKY: Objection,  
22 mischaracterizes the witness's  
23 testimony.

24 You can answer.

25 THE WITNESS:

1 N. MARTIN

2 creation or creativity, it's very,  
3 very, very important.

4 Q. Has Hermès actually sold  
5 fur-covered Birkins?

6 A. The Birkin is sold for a  
7 long time at that time. And we are  
8 rather very large of Birkin Bags being  
9 manufactured and sold. And from what I  
10 know, we have already commercialized  
11 Birkin Bags using fur.

12 Q. And as far as you're aware,  
13 when did Hermès commercialize Birkin  
14 Bags using fur?

15 A. I don't remember the exact  
16 date, but I saw pictures of bags,  
17 Birkin Bag with fur.

18 Q. And were those pictures  
19 produced in discovery in this case?

20 A. I think so.

21 Q. And were those Birkins that  
22 you saw entirely covered with fur?

23 A. What do you mean by  
24 "entirely"? Meaning all the bag?

25 Q. The entire bag was covered

1 N. MARTIN

2 in fur, including the handle?

3 A. If I remember, the picture  
4 that I saw it was fur, partly covering,  
5 but not entirely.

6 Q. Okay.

7 So you've never seen an  
8 actual Birkin Bag that was entirely  
9 covered in fur?

10 A. Personally, no.

11 Q. Okay.

12 A. But I can't say that we  
13 have never done that.

14 Q. Does Hermès consider any  
15 component of the MetaBirkins to be art?

16 MR. WARSHAVSKY: Objection.

17 THE WITNESS:

18 A. Which component do you  
19 refer to? I don't know. I -- I'd say  
20 I'm not an art expert. I'm unable to  
21 say whether it's art or not, so taking  
22 a piece is difficult for me.

23 Q. Okay.

24 I'm just asking --

25 You've seen all of them, so

1 N. MARTIN

2 does Hermès consider any of the  
3 components in any of the images to be  
4 art?

5 MR. WARSHAVSKY: Objection,  
6 asked and answered.

7 MR. MILLSAPS: I don't think  
8 the witness actually answered that  
9 question.

10 THE WITNESS:

11 A. Now that, if for instance,  
12 we go back, we know that they have  
13 placed the Joconde on the bag, I'm not  
14 an expert in art, but the Joconde  
15 from -- from the initial creator, I  
16 think it's -- it's art. Without being  
17 an expert, I think it's -- I can tell  
18 you it's art.

19 MR. MILLSAPS:

20 Q. Okay.

21 We can go ahead and -- I'm  
22 going to go ahead and give the first  
23 exhibit here, which is going to be the  
24 Complaint.

25

1 N. MARTIN

2 that is around the same. Its image.

3 It refers to -- It's a lot of things.

4 Q. Okay.

5 Are the MetaBirkins images

6 reproductions of actual Birkin

7 Handbags?

8 A. If you mean by "actual,"

9 meaning bags that exist and that I

10 know?

11 Q. Yes.

12 A. You mean that?

13 Q. I mean that.

14 A. So the response is, no.

15 Q. Okay.

16 Are MetaBirkins wearable in

17 virtual world -- worlds?

18 A. I think they are.

19 Q. And what's your basis for

20 saying that?

21 A. I think "wearable" means a

22 lot of things, including in particular

23 in the metaverse, and I think you can

24 wear the MetaBirkin on your internet

25 account. You can wear it in profile



1 N. MARTIN

2 images to be "blurry"?

3 A. What does blurry mean?

4 TRANSLATOR: (Translating.)

5 A. They are blurry.

6 Q. Okay.

7 Do you consider the title  
8 MetaBirkins to be descriptive in any  
9 way of these images?

10 A. Sorry, could you repeat?

11 Q. Do you consider the title  
12 MetaBirkins to be in any way  
13 descriptive of what you see in these  
14 images?

15 MR. WARSHAVSKY: Objection.

16 MR. MILLSAPS: What is the  
17 objection?

18 MR. WARSHAVSKY: I don't know  
19 what the word title means there. If  
20 you want to ask him about the term, you  
21 could ask him about the term.

22 MR. MILLSAPS:

23 Q. Do you consider the word  
24 MetaBirkins to be in any way  
25 descriptive of the images that you see

1 N. MARTIN

2 here?

3 A. There is some link between  
4 the title and what I see.

5 Q. What is that link?

6 A. It's a Birkin Handbag.

7 MR. MILLSAPS: We could go to  
8 the next exhibit. We'll mark this --  
9 We'll mark this as Exhibit 4.

10 (Whereupon, Campbell Soup Cans, Andy Warhol,  
11 Images was marked as Exhibit 4 for identification,  
12 as of August 30th, 2022.)

13 MR. WARSHAVSKY: I'll also  
14 note Madame Court Reporter, since the  
15 break, I think you had me and  
16 Mr. Millsaps backwards.

17 MR. MILLSAPS:

18 Q. I'm handing you Exhibit 4,  
19 Mr. Martin. Do you know what these  
20 images are that you're looking at here?

21 A. I'm not an expert in art,  
22 but I can read that it's from Andy  
23 Warhol, and I think it's a painting.

24 Q. Have you seen this work  
25 before?

1 N. MARTIN

2 Mr. Rothschild to explicitly mislead  
3 others to believe that MetaBirkins is  
4 associated with Hermès?

5 A. Can you repeat that?

6 Because there's a lot of words in this  
7 question, sorry.

8 Q. Yes. Yes. Yes.

9 Does Hermès have evidence  
10 of any attempts by Mr. Rothschild to  
11 explicitly mislead others to believe  
12 that MetaBirkins have an association  
13 with Hermès?

14 A. Yes.

15 Q. And what is that evidence?

16 A. I would say the use of the  
17 word Birkin. I don't remember all  
18 the -- all the details, but I remember  
19 at the beginning, Birkin was used  
20 alone. And I remember that one could  
21 think that it was Hermès.

22 I don't have a -- I don't  
23 remember all the details, but the use  
24 of the Birkin, the use of the Birkin  
25 trade dress, the way the communication

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2 has been made, and it could be  
3 considered explicitly misleading.

4 Q. Are you aware of any other  
5 evidence of that?

6 A. I -- I don't have any more  
7 in mind, so --

8 Q. When you were preparing for  
9 your deposition in this case, did you  
10 review any documents produced in  
11 discovery that relate to this issue of  
12 explicit misleadingness?

13 A. I reviewed a lot of  
14 documents, and I don't -- I don't  
15 remember whether they were one specific  
16 on this. I can't tell you.

17 MR. MILLSAPS: I'm going to  
18 show -- I'm going to move to the next  
19 exhibit.

20 Q. I'm handing you Exhibit  
21 Number 7, Mr. Martin.

22 (Whereupon, Partial Exhibit AE from Hermès's  
23 Amended Complaint, Image was marked as Exhibit 7  
24 for identification, as of August 30th, 2022.)

25 And I'll -- I'll represent that this is a

1 N. MARTIN

2 explicitly misleading a legal term in  
3 the U.S.?

4 Q. I am just using it in the  
5 meaning of as you understand the word  
6 explicit and misleading -- explicitly  
7 misleading.

8 It is also a legal term,  
9 but when I ask you, I'm asking you just  
10 you your common understanding of those  
11 words.

12 A. Here --

13 For me, MetaBirkins is  
14 explicitly misleading.

15 Q. And how is that explicitly  
16 misleading?

17 A. Because people will get  
18 confused and think it's from Hermès.

19 Q. Do you see anything else  
20 written here aside from just the word  
21 MetaBirkins that you would consider to  
22 be explicitly misleading?

23 ATTORNEY FOR DEFENDANT: Same  
24 objection.

25 THE WITNESS: